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(1) Supreme Court, U.S.
FILED

CASE NO. 07 - 41 JUN 2 5 2007

IN THE OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

DIANA SUNDY
PETITIONER
V.

CITY OF CHAMBLEE, GEORGIA
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA
STATE OF GEORGIA, ATLANTA, GEORGIA
(CASE NO. S07C0403)

PETITION FOR WRIT OF CERTIORARI

FILED BY PETITIONER
DIANA SUNDY, Pro se
c/o P. O. Box 76320
Atlanta, GA 30358
770-633-1617

QUESTIONS PRESENTED

1. Whether or not the court had jurisdiction for trial and if it was due process when a police officer testified to one thing at the motion hearing and to another thing at the trial?

2. Whether or not it was due process by the trial court when it proceeded to trial knowing that the Petitioner did not understand her rights and the court failed to inquire about counsel, and thereafter the Petitioner discovered Georgia's right to a trial by jury cannot be waived without consent and neither issue is waived by a silent record?

3. Whether or not Georgia citizens are afforded due process by police use of mobile data terminals to

arbitrarily screen automobile tags, without probable cause or suspicion, and does it constitute an unmarked checkpoint and/or a "technological random stop" in violation of due process of the 4th Amendment to the U.S. Constitution?

LIST OF PARTIES

The captioning of the case includes the parties involved.

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DECISIONS BELOW

On 5 February 2007, the Supreme Court of Georgia denied the Petition for Certiorari (Appendix A). On 27 March 2007, it also denied the Petitioner's Motion for Reconsideration (Appendix B). The Court of Appeals of the State of Georgia dismissed for lack of jurisdiction the Petitioner's direct appeal from an order of the superior court (Appendix C). The Court of Appeals dismissed the Petitioner's Motion for Reconsideration (Appendix D). There has never been a determination on the merits of this case.

JURISDICTIONAL GROUNDS

The final order was issued and filed 05 February 2007, from the Georgia Supreme Court, Atlanta, Georgia. Case No. S07C0403. The court was repetitioned, it was denied on 27 March 2007. Jurisdiction is conferred upon this court by 28 U.S.C.1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution,
Preamble, "Blessings of Liberty"

Article 4 .....Amendments

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Georgia Constitution
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OCGA 24-9-82

OCGA 40-2-130(c)

OCGA 40-5-2(b), (c)(D)

STATEMENT OF THE CASE

Petitioner Sundy was stopped and ticketed by City of Chamblee, Georgia, Police Officer Jones for an expired tag on the car. Petitioner motioned the Court in writing to dismiss the case based upon constitutional and administrative grounds. Petitioner appeared on 11 January 2006, in special appearance only, to argue said motion to dismiss.

At the motion hearing, Officer Jones gave contradictory sworn testimony. The motion was denied without addressing the constitutional and administrative issues raised. Petitioner Sundy objected and was overruled; the judge moved immediately to trial with Petitioner standing mute. Petitioner Sundy did not understand her rights and so informed the court (pre-trial); Petitioner was without counsel and never waived her right to counsel. At the trial, Officer Jones' sworn testimony contradicted his sworn testimony at the motion hearing. Petitioner was pronounced guilty by the court and fined $115; the fine was immediately paid.

There is no official transcript of the motion hearing or trial but affidavits were filed by a witness and the Petitioner. Upon going to the Clerk's office on 30 January 2006 to obtain a copy of the record, the Petitioner was provided a copy of the

ticket and a copy of the "Advice of Rights" sheet signed by Prosecutor Noah Pines; these were downloaded from the Court Clerk's computer and certified as "all of the record" by the Clerk. Neither the Petitioner's "Motion to Dismiss" nor a copy of the receipt showing the fine was paid were part of the record.

Petitioner appealed to the Dekalb County Superior Court via Petition for Writ of Certiorari. The petition was denied. Petitioner has been denied review in the Dekalb County Superior Court, the Georgia Court of Appeals, and the Georgia Supreme Court.

REASONS FOR GRANTING THE WRIT

Fourteenth Amendment Violations

Police Officer Jones testified that he had no reasonable or articulable suspicion, probable cause, or any other reason to run the Petitioner's vehicle

license plate number through the Mobile Data Terminal (MDT) (onboard computer) in his vehicle. His visual inspection of the tag indicated no violation of law. Officer Jones, parked in the median and having established an unmarked checkpoint, was on a warrantless "fishing trip." Rather than pursuing observed violations of law, Officer Jones was, in a technological sense, performing random stops.

> "Random stop" is impermissible and evidence derived from such a seizure and/or search is inadmissible. United States v. Turner, 628 F. 2d 461 (5th Cir. 1980).

A person's possessory interest in his/her vehicle license plate number lies not in the plate number itself but in the use of the plate number to access a centralized database(s) containing sensitive personal information which fall within the ambit of Fourth Amendment protections. Just as the external visual inspection of a closed box does not lead to a permissible search of the box's content so the visual

inspection of a license plate, absent visible violation of law, should not lead to a search of the contents of a computer database. The license plate and the computerized database are separate and distinct.

Petitioner contends that, absent alleged unlawful activity or a warrant, she had a reasonable expectation of liberty and of privacy in the computerized records and accessing and using the license plate number and that Officer Jones' MDT search of those records violated due process, the Georgia Constitution, Art. I, § I, Para. XIII (2005), and the U.S. Constitution, Bill of Rights, 4th Amendment, Searches: "The right of the people to be secure in their person, house, ...and effects (automobile, which is still private property) against unreasonable searches and seizures shall not be violated..."

According to O.C.G.A. 40-5-2(b) and (c)(D), driver's license records maintained by the

Department of Driver Services are not public records but it may release driver's license information "to a judge, prosecuting official, or law enforcement agency for use in investigations or prosecutions of alleged criminal or unlawful activity." Similarly, according to O.C.G.A. 40-2-130(c), motor vehicle registration records maintained by the Department of Driver Services are not public records, but the records of any particular motor vehicle may be made available for inspection by law enforcement officials under limited investigatory circumstances.

Random checking of license plate numbers violates the limited circumstances proscribed by statute. This is like tapping telephones, without a warrant, to hear if someone is committing, or going to commit, a crime. It is a violation of liberty and is unconstitutional and illegal, and evidence obtained in this manner is not admissible in court. Judicial

oversight is sought to ensure constitutional and legal standards are met. The trial court violated Petitioner in allowing any evidence obtained in this manner, including the testimony of Officer Jones, to be used against Petitioner.

Police Officer Jones set up an unmarked checkpoint in the City of Chamblee, Georgia, using his mobile data terminal (MDT) to run arbitrary tag and license checks. This is a violation of liberty and of due process.

Fourth Amendment Violations

Petitioner contends that random vehicle tag searches performed using Mobile Data Terminals (MDTs) are, in fact, a type of random checkpoint, warrantless search and are therefore in violation of the requirements of a constitutionally valid checkpoint set forth in Baker v. State, 252 Ga. App.

695, 556 SE2d 892 (2001), Perdue v. State, 256 Ga. App. 765, 578 SE2d 456 (2002), and LaFontaine v. State, 269 Ga. 251, 497 SE2d 367 (1998). Checkpoints must be approved, supervised, stationary (not mobile or rolling), and marked/posted. Checkpoints and roadblocks cannot be random (roadblocks must also be supervised) .

MDTs are directly linked to computer databases belonging to national and local government agencies. This allows officers to gain access to information that would heretofore have been unavailable without judicial authorization or without establishing a police checkpoint and physically stopping vehicles for the purpose of inspection. A person's possessory interest in his/her vehicle license plate number lies not in the plate number itself but in the use of the plate number to access a centralized database(s) containing sensitive

personal information which fall within the ambit of Fourth Amendment protections.

In Delaware v. Prouse, 4440 U.S. 648 (99 SC 1391, 59 LE2d 660) (1979), the United States Supreme Court held that patrolmen may not stop motorists at random to inspect their driver's licenses and vehicle registration papers, absent some specific, articulable suspicion of wrongdoing. The holding in this case did not preclude developing methods for spot checks that did not involve the unconstrained exercise of discretion and was not intended as a prohibition against the utilization of highway checkpoints to conduct such inspections, for the Supreme Court specifically indicated in that opinion that roadblocks/checkpoints could be considered a valid alternative to random vehicle stops.

Random MDT searches, a "technological random stop," allow the abuse of discretion on the

part of the police officer that the Court specifically ruled against in Delaware v. Prouse. Random MDT searches allow police officers to pick the target of their investigations on their own without regard to observed violations of law. This unbridled discretion allows officers to determine the course of their investigations based upon the appearance of the driver, the appearance of the vehicle, or the location of the vehicle, all without articulable or reasonable suspicion, and with prejudice. Without judicial review, a court order or warrant, this is a violation of due process, and is derogatory to privacy and being at liberty. For what purpose is information being mined or the individual searched?

Officer Jones testified that he ran the Petitioner's vehicle license plate number through his MDT without reasonable suspicion, probable cause or articulable suspicion. Officer Jones also testified

that (1) he randomly runs tags through his MDT more often towards the end of the month, (2) he does not run all tags through his MDT, and (3) he personally decides where he will position his "unmarked checkpoint" for the purpose of utilizing his MDT while his vehicle is stationary. Several questions arise: Does Officer Jones decide to MDT each 2nd or 3d or 4th vehicle or does he use such criteria as race, gender, bumper stickers, or out-of-county tags? Upon what authority and/or supervision (any judicial approval, court order or warrant) does he conduct each MDT search?

MDT searches involve the same intrusions that accompany a physical stop, i.e., the checking of registration, license, warrants, etc. However, during an MDT search, the motorist is completely unaware of the intrusion as the checkpoint is not identified or marked in any way. This is a violation of Petitioner's

rights and a violation and denial of due process. Officer Jones violated his oath of office in setting up an unmarked checkpoint and his actions were blatantly unconstitutional and therefore unlawful.

Jurisdiction over person violations

At the motion hearing, the court willfully and intentionally violated the Petitioner. Petitioner Sundy appeared specially and not generally, for the purpose of the motion hearing only, and to resolve all claims and rights. Petitioner Sundy was compelled or forced to be her own counsel and had marginal legal knowledge which she had obtained during the weeks spent preparing her "Motion to Dismiss." SHE DID NOT AND DOES NOT WISH TO BE TREATED AS A LAWYER. At the motion hearing, while under oath, Police Officer Jones testified one way voluntarily and another way (contradicting his previous testimony)

under the leading of the Prosecutor. During the motion hearing, the Petitioner objected to the contradictory testimony and was overruled. The City of Chamblee Municipal Court violated the Petitioner in admitting conflicting testimony from Officer Jones. Without addressing the issues raised in writing, the judge orally dismissed the Petitioner's "Motion to Dismiss" and proceeded to trial. Petitioner Sundy stood mute.

At the trial, Police Officer Jones altered his sworn testimony again. Petitioner contends the Court violated her by not throwing out Officer Jones' conflicting testimony at the motion hearing and at the trial. The Petitioner, in the context of OCGA 24-9-82 ("A witness may be impeached by disproving the facts testified to by him."), raised the issue of Officer Jones' conflicting testimony at the motion hearing but was ignored by the Court. The Court, on

its own recognizance, should then have raised the motion to impeach Officer Jones' testimony. Officer Jones testified at the motion hearing that he visually saw the car tag expired. Later, under the leading of the prosecutor, he said he had to run the vehicle tag through his Mobile Data Terminal (MDT) to determine expiration. At the trial he testified only to choosing to randomly run the tag through his MDT. This qualifies for an impeachable witness and violates due process and a fair trial *if, indeed, the court had jurisdiction (to proceed to trial)!*

At the trial proceedings, and not the hearing, the Prosecutor read aloud to Petitioner Sundy from a paper titled "Advice of Rights" and then demanded the Petitioner to sign the paper. These 'rights' were read very quickly and belligerently to the Petitioner. Petitioner did not understand several of the rights and so stated to the Court. The Court threatened the

Petitioner with "contempt of court" and immediate fines and jail for not understanding the verbalized "rights" and for not signing the paper. The Petitioner felt as if she were being coerced to sign the "rights" sheet but did not sign. At the trial, Petitioner Sundy did not have counsel, nor waive counsel or right to counsel nor trial by jury. The Court violated Petitioner in rushing to trial without the Petitioner's knowledge and understanding, or a knowing waiver of her rights. Petitioner was denied a fair trial.

> "Trial judge and prosecutors have the responsibility to see that the defendant receives a fair trial." Dean v. State, 247 Ga. 724, 279 S.E. 2d 217 (1981)

Petitioner contends that the appellate courts in this case should have helped to uphold this responsibility.

Petitioner had appeared specially and not generally, for the purpose of the motion hearing only,

and made no knowing waiver of any of her rights, including right to counsel and a trial by jury Petitioner was unprepared for trial and so stated to the Court. The Court violated Petitioner and her rights in continuing to trial.

> Burden is upon prosecution to affirmatively establish valid waiver of right to counsel, and waiver may not be presumed from a silent record. Blaylock v. Hopper, 233 Ga. 504, 212 S.E. 2d 339 (1975)

The Georgia Constitution, Article I, Sect. I, Para. XIV, Benefit of Counsel, "Every person...shall have...benefit of counsel." Petitioner stood mute during the "trial" of the proceedings and did not waive her motion to dismiss nor right to counsel and a trial by jury.

> The right to counsel at a criminal trial is deemed so fundamental to the interests of justice that denial thereof automatically vitiates any conviction obtained (The automatic reversal rule). This is true even

> though there is no showing of any prejudice or unfairness in the proceedings, or even any need for counsel. Gideon v. Wainwright, 372 U.S. 335.

When the court started the trial, it had lawfully ceased jurisdiction and then usurped and unlawfully exercised jurisdiction over Sundy, and reached conviction (1) upon a silent record; (2) without affording due process; (3) by Fourth Amendment violations; (4) without counsel; and, (5) without a trial by jury.

> A court's jurisdiction at the beginning of trial may be lost in the course of the proceedings due to failure to complete the court, as this amendment requires, by providing counsel for the accused who is unable to obtain counsel, who has not intelligently waived this constitutional guarantee, and whose life or liberty is at stake. If this requirement of this amendment is not complied with, the court no longer has jurisdiction to proceed. Reid v. Sanford, 42 F. supp. 300 (N.D. Ga. 1941)

The court made no inquiry as to indigence.

> The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently

> and understandingly rejected the offer. Anything less is not waiver of the right to counsel. Blaylock v. Hopper, 233 Ga. 504, 212 S.E. 2d 339 (1975).

Petitioner lastly contends that the Respondent gives tacit agreement to the Petitioner's allegations if they do not respond in the appellate process. At no time did the City of Chamblee contradict or oppose or contest any of the Petitioner's allegations of violations.

> "[s]ilence or an equivocal response to an assertion made by another, which would ordinarily be expected to be denied, is a tacit admission. The assertion and the words or conduct are admissible if the reaction is not a clear denial." House v. State, 535 N.E.2d 103, 109-110 (Ind. 1989)

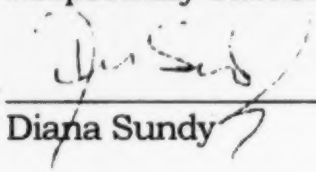
In the alternative, it is apparent that the Appellate courts in Georgia take up the Respondent's cause, and need to respond, by denying the pro-se litigant any hearing in the matter, even if monies (filing fees) have been paid.

CONCLUSION AND PRAYER FOR RELIEF

Wherefore Petitioner prays this court grant the certiorari and review this matter, overturn the conviction and rule accordingly on the above questions.

This 25th day of June, 2007

Respectfully submitted,



_____(signed)

Diana Sundy

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANA

Date: February 05, 2007

Diana Sundy
P. O. Box 76320
Atlanta, GA 30358

Case No. S07C0403

DIANA SUNDY v. CITY OF CHAMBLEE et al.

COURT OF APPEALS CASE NO. A07A0267

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

APPENDIX A

SUPREME COURT OF GEORGIA

Case No. S07C0403 Atlanta, March 27, 2007

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

DIANA SUNDY v. CITY OF CHAMBLEE et al.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

APPENDIX B

Court of Appeals
Of the State of Georgia

ATLANTA, September 27, 2006

The Court of Appeals hereby passes the following order:

A07A0267.SUNDY v. CITY OF CHAMBLEE.

Diana Sundy filed a direct appeal from an order of the superior court dismissing her petition for a writ of certiorari directed to the municipal court in a case involving a fine imposed for driving with an expired vehicle tag. Appeals from decisions of the superior courts reviewing decisions of lower courts by certiorari must be made by application for discretionary appeal. OCGA § 5-6-35 (a) (1). Because Sundy failed to follow the proper procedure here, her appeal is hereby *dismissed* for lack of jurisdiction. *Power v. State*, 231 Ga. App. 335, 336 (499 SE2d 356) (1998).

APPENDIX C

Court of Appeals
Of the State of Georgia

ATLANTA, November 2, 2006

The Court of Appeals hereby passes the following order:

A07A0267.SUNDY v. CITY OF CHAMBLEE.

Upon consideration of the Motion for Reconsideration filed on behalf of Appellant in the above styled case, it is hereby ordered that the Motion for Reconsideration is hereby dismissed as untimely filed.

APPENDIX D